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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 JUAN JOSE RAMIREZ-ORTIZ,

15 Defendant.

CASE NO. 11CR0239-LAB

**ORDER DENYING RULE 35 MOTION  
TO REDUCE SENTENCE**

16 The Government has filed a motion under Fed. R. Crim. P. 35(b)(2)(B) asking the  
17 Court to reduce the sentence of Juan Ramirez-Ortiz, whom this Court sentenced to 12  
18 months in custody after revoking his probation in January of this year. Ramirez-Ortiz was on  
19 probation for illegally reentering the United States after being deported. His probation  
20 revocation came after he suffered a new conviction – his third – for the same offense. He  
21 received a 14 month sentence on the new case, and this Court ordered its 12 month  
22 probation revocation sentence to run consecutively to that sentence. The Government now  
23 asks the Court to cut its 12 month sentence to 4 months, or alternatively to order the  
24 probation revocation sentence to run concurrently with the 14 month sentence.

25 The Government submits that, after he was sentenced, Ramirez-Ortiz substantially  
26 assisted in the prosecution of an alien smuggler, one Hewitt. Accepting the Government's  
27 representation, the defendant is eligible for a sentence reduction under Rule 35(b). *United*  
28 *States v. Tadio*, 663 F.3d 1042, 1047-48 (9th Cir. 2011). But eligibility for a reduction isn't the

1 same as entitlement to one. Before granting a sentence reduction, the Court may still take  
2 into account the sentencing factors under 18 U.S.C. § 3553(a) to determine whether a  
3 reduction is equitable and warranted. *Id.* at 1048, 1055. That's a sticking point for the Court  
4 here because while Ramirez-Ortiz did assist in Hewitt's prosecution, it turns out that Hewitt  
5 was one of the smugglers who was helping Ramirez-Ortiz sneak into the United States  
6 again.

7 Two § 3553(a) factors seem particularly relevant here<sup>1</sup>, and neither counsels in favor  
8 of the reduction the Government seeks. Section 3553(a)(2)(B) says a sentence should  
9 "afford adequate deterrence to criminal conduct." Reducing Ramirez-Ortiz's sentence isn't  
10 likely to do that. He got 41 months for his first illegal reentry in 1999. That sentence didn't  
11 deter him because he came back illegally in December 2010. He pled guilty to a second  
12 immigration felony in February 2011, and promised the Court he wouldn't do it again. Taking  
13 him at his word, the Court imposed 5 years probation in May 2011 (he had been in custody  
14 for 6 months before he was sentenced). But he didn't keep his word. In June 2014 he  
15 sneaked back in, assisted this time by Hewitt.

16 Imposing a shorter sentence for Ramirez-Ortiz's second immigration felony was a  
17 mistake; he stayed out only 3 years. In contrast, he stayed out 11 years after he got 41  
18 months for his first immigration felony. Longer sentences are thought to have greater  
19 deterrent effect than shorter ones. If that's true, cutting Ramirez-Ortiz's sentence to 18  
20 months or 14 months, as the Government urges, is unlikely to deter him from illegally  
21 returning to the United States in the future.

22 Besides deterrence, the Court's concerned with protecting the public. Ramirez-Ortiz  
23 has suffered four felony convictions in this country. In addition to his three immigration  
24 felonies, he was convicted in 1997 of a controlled substance offense. He was only 23 years  
25 old at that time, but as it turned out the drug conviction wasn't aberrational or the result of

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27 <sup>1</sup> Not all of § 3553(a) factors apply to revocation proceedings, *United States v. Miquel*, 444 F.3d 1173,  
28 1181-1182 (9th Cir. 2006), but affording adequate deterrence (18 U.S.C. § 3553(a)(2)(B)), and protecting the  
public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C)) are two factors that may be considered  
when evaluating a Rule 35(b) motion. *Tadio*, 663 F.3d at 1052. In addition to these two, the Court has  
considered all of the other relevant § 3553(a) factors.

1 mere youthful misjudgment. At age 26 he suffered a second felony conviction. He committed  
2 a third felony when he was 37, and a fourth at age 41. Regardless of whether racking up four  
3 felony convictions in less than 20 years can be considered "career criminality," it's an  
4 alarming record of continuing criminality with obvious implications for public safety. Releasing  
5 Ramirez-Ortiz after he has served only 14 or 18 months of his most recent sentence puts the  
6 public at risk and, in the Court's judgment, does not protect Americans "from further crimes  
7 of the defendant." 18 U.S.C. § 3553(a)(2)(C).

8 In evaluating this motion, the Court has adhered to the guidance provided in  
9 Application Note 3 to § 5K1.1 of the United States Sentencing Guidelines. That Note reminds  
10 judges that "[s]ubstantial weight should be given to the Government's evaluation of the extent  
11 of the defendant's assistance, particularly where the extent and value of the assistance are  
12 difficult to ascertain." U.S.S.G. § 5K1.1, comment (n.3); see also *United States v. Awad*, 371  
13 F.3d 583, 586-87 (9th Cir. 2004) (sentencing judge has wide latitude in evaluating the  
14 significance and usefulness of the defendant's assistance but should give substantial weight  
15 to the government's evaluation). But, of course, this doesn't mean that the Court has to  
16 unthinkingly accept the Government's characterizations of evidence or reduce the  
17 defendant's sentence merely because the Government asks. *United States v. Smith*, 839  
18 F.2d 175, 180 (3d Cir. 1988). Instead, presuming that the defendant provided substantial  
19 assistance, the Court may consider relevant § 3553(a) factors in deciding whether to reduce  
20 the defendant's sentence and determining the extent of the reduction. *Tadio*, 663 F.3d at  
21 1052.

22 The Court isn't sold on the Government's claim that Ramirez-Ortiz was an important  
23 witness in the case against Hewitt. In reality, apart from anything Ramirez-Ortiz had to say,  
24 the case against Hewitt was strong. According to the Government's own account, Border  
25 Patrol agents saw a car driving suspiciously at night on Old Highway 80 – a remote stretch  
26 of highway that's notorious for alien smuggling activity. When the car eventually pulled to the  
27 side of the road, the agents approached. As they did, they saw two men run into nearby  
28 bushes. The agents contacted the driver of the car who let them look in the trunk. Two

